

REMARKS***Summary of the Amendment***

Upon entry of the above amendment, claims 18, 21, 26, 37, and 38 will have been amended and claim 23 will have been canceled without prejudice or disclaimer. Accordingly, claims 18 – 22 and 24 – 38 currently remain pending.

Summary of the Official Action

In the instant Office Action, the Examiner has rejected claims 18 – 37 over the applied art of record. By the present amendment and remarks, Applicant submits that the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Summary of Interview

Applicant gratefully acknowledges the courtesy extended by Examiners Henkel and Beisner in conducting an interview with his representative. In the interview, a proposed amendment to independent claim 18 was presented for review and consideration of the Examiners. The Examiner's indicated that, while this amendment would likely overcome the pending rejection, it would require further search and consideration before a determination of allowability of the claim could be established.

Accordingly, it was agreed that Applicant would file this submission along with a Request for Continued Examination. It was further agreed that independent claims 37 and 38 would be amended to generally include the subject matter now presented in independent claim 18 related to the channels extending through the openings in the stories.

By the present amendment, claims 18, 37, and 38 have been amended in the manner discussed in the interview, and favorable consideration of the claims is respectfully requested.

Traversal of Rejection Under 35 U.S.C. § 103(a)**1. Over Schlimme in view of Reynolds**

Applicant traverses the rejection of claims 18 – 32 and 35 – 38 under 35 U.S.C. § 103(a) as being unpatentable over SCHLIMME (U.S. Patent No. 3,849,255) in view of REYNOLDS et al. (German Patent No. 17932) [hereinafter “REYNOLDS”]. The Examiner asserts that SCHLIMME shows all of the recited elements of the claims except for the supply and discharge paths being arranged in the central cylinder, but asserts it would have been obvious to do so in view of the disclosure of REYNOLDS. Applicant traverses the Examiner’s assertions.

With regard to the pending rejection of the claims under 35 U.S.C. § 103(a), Applicants note the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, Applicants are under no obligation to submit evidence of non-obviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met:

- (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- (2) there must be a reasonable expectation of success; and
- (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP §2142.

Further, while rejecting a *rigid* application of the teaching, suggestion, or motivation (“TSM”) test in an obviousness inquiry, the U.S. Supreme Court acknowledged the importance of identifying “a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does” in an obviousness determination. *Takeda Chemical Industries, Ltd. v. Alphapharm Pty., Ltd.*, 492 F.3d 1350, 1356-1357 (Fed. Cir. 2007) (quoting *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1731 (2007)).

By the present amendment, Applicant’s independent claim 18 recites, *inter alia*, *air-permeable annular supporting floors* associated with each story being structured and arranged to support grain to be germinated, a central cylindrical space at an inner diameter of the annular supporting floors in which *perpendicular channels* extending over an entire height of the stories are arranged, the *cylindrical space being divided to define the channels as segmented cross-sections that are separated from each other by radial intermediate walls*, and each story comprises an *outflow opening* allowing an air flow path from a respective supply channel to a respective floor and its associated grain, and a *flow-through opening* allowing an air flow path to a respective discharge channel. Further, Applicant’s independent claim 37 recites, *inter alia*, arranging grain to be germinated on a respective air-permeable supporting floor associated with at least one of the plurality of stories, wherein the supporting floor of each of the plurality of stories includes a central opening, *guiding air through at least one of a plurality of channels arranged within the central openings as a flow path* associated with the at least one of the plurality of stories, the flow path extending through a supply channel, through displacement elements, through the respective supporting floor and its associated grain, and *through at least one other of the plurality of channels within the central openings as a discharge path*, wherein the plurality of

channels are defined as segmented cross-sections separated from each other by radial intermediate walls, and guiding the air in the at least one supply channel and in the at least one discharge channel through the central openings arranged within the plurality of stories.

Applicant's independent claim 38 recites, *inter alia*, an air flow generator structured and arranged to generate an air flow path through the at least one supply channel, through at least one outflow opening located below at least one of the air-permeable supporting floors, through the at least one of the air-permeable supporting floors and the grain supported thereon, through at least one flow-through opening arranged above the at least one of the air-permeable supporting floors, and through the at least one discharge channel, and at least one central opening within at least one story, *through which the at least one supply channel and the at least one discharge channel extend*, wherein *the at least one supply channel and the at least one discharge channel are defined by radial intermediate walls as separate segmented cross-sections within the at least one central opening*. Applicant submits that no proper combination of SCHLIMME in view of REYNOLDS under 35 U.S.C. § 103(a) can render obvious the above-noted combination of features.

Applicant notes that SCHLIMME discloses a germinating and drying device for malt that includes a vertical stack of working chambers. The working chambers include a rack 13 for the malt that divides the chambers into an upper chamber 12 and a lower chamber 11. Further, each chamber is connected via closable ducts 18 to a central cylindrical stack 7 having a blower 14 at the bottom, and the blower air is deflected into a desired working chamber by positioning a movable floor 16 adjacent the ducts of the desired working chamber and opening the ducts.

However, Applicant notes that the device of SCHLIMME fails to establish or provide flow paths corresponding to those recited in at least independent claims 18 and 37. In particular,

Fig. 4 of SCHLIMME discloses the various flow paths established for germination and drying.

As described, only the drying operation utilizes the central cylinder stack 7. As illustrated, warm air from blower 14 is conveyed upward along path a through central cylinder stack 7 until it is deflected by movable floor 16 through ducts 18 to flow along path b through rack 13. After passing through rack 13, portions of the air are conveyed through or along one of the illustrated paths c, d, f, g, h, i, j, k, l, and/or x. Thus, while SCHLIMME shows air discharged through channels 2, 4, or 5, there is no disclosure of air being discharged through central cylinder stack 7.

REYNOLDS shows a device having a number of levels having a central chamber extending through the levels. From the illustration, it appears that the air flow through the central chamber B creates a suction of air from outside of central chamber B (i.e., through openings p) into central chamber B through the small diamond oriented openings. However, in contrast to the pending invention, it does not appear that the air flow through central chamber B exits into the chamber housing the levels. Instead, REYNOLDS only shows air within the chamber with the levels being discharged into central chamber B.

Thus, Applicant submits that neither SCHLIMME nor REYNOLDS discloses a central chamber that is both a supply channel and a discharge channel, as recited in at least independent claims 18, 37, and 38. Because neither document discloses at least the above-noted features, Applicant submits that no proper combination of SCHLIMME in view of REYNOLDS can render obvious under 35 U.S.C. § 103(a) the embodiments of the invention recited in at least independent claims 18, 37, and 38.

Further, because neither document arguably discloses a central chamber in which both a supply channel and a discharge channel are formed, Applicant further submits that no proper

combination of these documents can even suggest the recited structural features of the channels recited in the independent claims.

Applicant submits that claims 19 – 22, 24 – 32, 35, and 36 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicant submits that SCHLIMME fails to anticipate the embodiments of the invention recited in claims 19 – 22, 24 – 32, 35, and 36.

Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 18 – 22, 24 – 32, and 35 – 38 under 35 U.S.C. § 103(a) and indicate that these claims are allowable.

2. Over Schlimme in view of Neubert

Applicant traverses the Examiner's rejection of claims 33 and 34 under 35 U.S.C. § 103(a) as being unpatentable over SCHLIMME (U.S. Patent No. 3,849,255) in view of NEUBERT (U.S. Patent No. 3,370,846). While acknowledging that SCHLIMME fails to show another supporting floor for drying below the lowermost supporting floor, the Examiner asserts it would have been obvious to do so in view of the disclosure of NEUBERT. Applicant traverses the Examiner's assertions.

Applicant initially notes that, on its face, this rejection is improper and should at the very least be reformulated to include REYNOLDS. That is, as claims 33 and 34 depend from independent claim 18, these claims include the subject matter of claim 18. Therefore, the documents previously utilized by the Examiner to reject the subject matter of claim 18 should again be utilized in an appropriate action of claims 33 and 34.

Further, Applicant notes that NEUBERT fails to disclose or even suggest the subject matter noted above as deficient in SCHLIMME (or REYNOLDS). In particular, Applicant notes that, as NEUBERT fails to even arguably show a central chamber having both a supply channel and a discharge channel, as well as the structure to define these channels, this document cannot even arguably suggest any manner for modifying the central cylinder stack of SCHLIMME (with or without REYNOLDS) under 35 U.S.C. § 103(a). Thus, Applicant notes that no proper combination of SCHLIMME (in view of REYNOLDS) in view of NEUBERT can render obvious under 35 U.S.C. § 103(a) the embodiments of the invention recited in at least independent claim 18.

Further, Applicant submits that claims 33 and 34 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicant submits that no proper combination of SCHLIMME (in view of REYNOLDS) in view of NEUBERT can render unpatentable the combination of features recited in claims 33 and 34.

Accordingly, Applicant requests that the Examiner reconsider and withdraw the rejection of claims 33 and 34 under 35 U.S.C. § 103(a) and indicate that these claims are allowable.

Application is Allowable

Thus, Applicants respectfully submit that each and every pending claim of the present invention meets the requirements for patentability under 35 U.S.C. §§ 102 and 103, and respectfully request the Examiner to indicate allowance of each and every pending claim of the present invention.

Authorization to Charge Deposit Account

The undersigned authorizes the charging of any necessary fees, including any extensions of time fees required to place the application in condition for allowance by Examiner's Amendment, to Deposit Account No. 19 - 0089 in order to maintain pendency of this application.

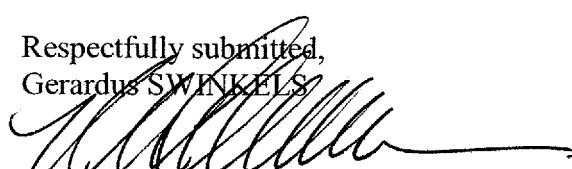
CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicants' invention, as recited in each of claims 18 – 22 and 24 – 38. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Respectfully submitted,
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